

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALEJANDRO GUZMAN,

1: 05 CV F 0121 OWW DLB P

Plaintiff,

**ORDER DISMISSING COMPLAINT WITH  
LEAVE TO AMEND**

V.

R. ANDREWS,

## Defendants.

Plaintiff is a prisoner in federal custody at the Taft Correctional Institute and is proceeding pro se. Plaintiff has filed a civil rights complaint and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff seeks relief pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), which provides a remedy for violation of civil rights by federal actors. Pending before the Court is plaintiff's complaint filed January 28, 2005.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C. § 1915(e)(2). If the Court determines that the complaint fails to state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint

1 can be cured by amendment. Lopez v. Smith, 203 F.3d 1122 (9<sup>th</sup> Cir. 2000) (en banc).

2 In the instant case, Plaintiff names as defendants Warden Andrews; Assistant Warden  
3 Buckles; Dr. Pham; Dr. Hinz; Dr. Spack; Dr. Layport and Dr. Odoluga. Plaintiff alleges that  
4 defendants have prevented him from being transferred to a facility where he can receive proper  
5 treatment for valley fever with which he was diagnosed in October 2004. He alleges that  
6 Andrews and the other named defendants have been deliberately indifferent to his serious  
7 medical condition in violation of the Eighth Amendment. He requests defendants Andrews and  
8 "others who are directly responsible for denial of medical attention" be ordered to transfer him to  
9 a federal prison where he can be properly treated for this disease. He alleges that "medical staff"  
10 are doing nothing other than experimenting on him. Plaintiff states that he is concerned that once  
11 he is released, he will be deported to his country where medications for this illness are very  
12 expensive. He alleges the prison administration is doing not enough to prevent the disease.

13 A. Failure to Link Defendants to Specific Conduct.

14 The Civil Rights Act under which this action was filed provides:

15 Every person who, under color of [state law] . . . subjects, or  
16 causes to be subjected, any citizen of the United States . . . to the  
17 deprivation of any rights, privileges, or immunities secured by the  
18 Constitution. . . shall be liable to the party injured in an action at  
19 law, suit in equity, or other proper proceeding for redress. 42  
20 U.S.C. § 1983.

21 The statute plainly requires that there be an actual connection or link between the actions of the  
22 defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v.  
23 Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The  
24 Ninth Circuit has held that "[a] person 'subjects' another to the deprivation of a constitutional  
25 right, within the meaning of section 1983, if he does an affirmative act, participates in another's  
26 affirmative acts or omits to perform an act which he is legally required to do that causes the  
27 deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).  
28 Plaintiff has made general allegations in his complaint about the failure of medical staff to

1 provide proper treatment for him but he has failed to described specific conduct on the part of  
2 any of the named defendants. Plaintiff's allegations are stated in vague terms and do not provide  
3 each individual defendant with sufficient notice of the actions they are alleged to have taken.  
4 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice  
5 and state the elements of the claim plainly and succinctly. Jones v. Community Redev. Agency,  
6 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity  
7 overt acts which defendants engaged in that support plaintiff's claim. Id. Because plaintiff has  
8 failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2) and has plaintiff has failed to  
9 link the named defendants with some affirmative act or omission, the complaint must be  
10 dismissed. The court will, however, grant leave to file an amended complaint to state his claims  
11 in more detail. In doing so, Plaintiff is advised of the following legal standards:

12 1. Supervisory Defendants

13 It appears that plaintiff has named defendants Andrews and Buckles based on their status  
14 in supervisory positions. Supervisory personnel are generally not liable under section 1983 for  
15 the actions of their employees under a theory of respondeat superior and, therefore, when a  
16 named defendant holds a supervisorial position, the causal link between him and the claimed  
17 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862  
18 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.  
19 941 (1979). To show a prima facie case of supervisory liability, plaintiff must allege facts  
20 indicating that supervisory defendants either: personally participated in the alleged deprivation of  
21 constitutional rights; knew of the violations and failed to act to prevent them; or promulgated or  
22 implemented a policy "so deficient that the policy itself is a repudiation of constitutional rights"  
23 and is "the moving force of the constitutional violation." Hansen v. Black, 885 F.2d 642, 646  
24 (9th Cir. 1989); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

25 2. Deliberate Indifference to Serious Medical Needs

26 A prisoner's claim of inadequate medical care does not constitute cruel and unusual  
27 punishment unless the mistreatment rises to the level of "deliberate indifference to serious  
28 medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). The "deliberate indifference"

1 standard involves an objective and a subjective prong. First, the alleged deprivation must be, in  
2 objective terms, "sufficiently serious." Farmer v. Brennan, 511 U.S. 825, 834 (1994) (citing  
3 Wilson v. Seiter, 501 U.S. 294, 298 (1991)). Second, the prison official must act with a  
4 "sufficiently culpable state of mind," which entails more than mere negligence, but less than  
5 conduct undertaken for the very purpose of causing harm. Farmer v. Brennan, 511 U.S. at 837.  
6 A prison official does not act in a deliberately indifferent manner unless the official "knows of  
7 and disregards an excessive risk to inmate health or safety." Id.

8 In applying this standard, the Ninth Circuit has held that before it can be said that a  
9 prisoner's civil rights have been abridged, "the indifference to his medical needs must be  
10 substantial. Mere 'indifference,' 'negligence,' or 'medical malpractice' will not support this cause  
11 of action." Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980), citing Estelle,  
12 429 U.S. at 105-06. "[A] complaint that a physician has been negligent in diagnosing or treating  
13 a medical condition does not state a valid claim of medical mistreatment under the Eighth  
14 Amendment. Medical malpractice does not become a constitutional violation merely because the  
15 victim is a prisoner." Estelle v. Gamble, 429 U.S. at 106; see also Anderson v. County of Kern,  
16 45 F.3d 1310, 1316 (9th Cir. 1995); McGuckin v. Smith, 974 F.2d 1050, 1050 (9th Cir. 1992),  
17 overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997)(en  
18 banc). Even gross negligence is insufficient to establish deliberate indifference to serious  
19 medical needs. See Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990). A prisoner's  
20 mere disagreement with diagnosis or treatment does not support a claim of deliberate  
21 indifference. Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989).

22 Prison inmates do not have a constitutional right to be incarcerated at a particular  
23 correctional facility or to be transferred from one facility to another. Meachum v. Fano, 427 U.S.  
24 215, 224-25 (1976).

25 **B. Conclusion**

26 In summary, the Court finds it necessary to dismiss the complaint in its entirety. The  
27 Court will, however, grant leave to file an amended complaint. Failure to cure the deficiencies  
28 will result in dismissal of this action without leave to amend.

1       If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
2 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
3 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
4 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there  
5 is some affirmative link or connection between a defendant's actions and the claimed deprivation.  
6 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);  
7 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

8       In addition, plaintiff is informed that the Court cannot refer to a prior pleading in order to  
9 make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended  
10 complaint be complete in itself without reference to any prior pleading. This is because, as a  
11 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
12 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no  
13 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
14 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

15       In accordance with the above, IT IS HEREBY ORDERED that:

16           1. Plaintiff's complaint is dismissed;  
17           2. The Clerk of Court is directed to send plaintiff a section 1983 complaint form  
18 for use by pro se prisoners;  
19           3. Plaintiff is granted thirty days from the date of service of this order to file an  
20 amended complaint that complies with the requirements of the Civil Rights Act, the Federal  
21 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the  
22 docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file  
23 an original and two copies of the amended complaint; failure to file an amended complaint in  
24 accordance with this order will result in dismissal of this action for failure to state a claim and  
25 failure to comply with the court's order.

26       IT IS SO ORDERED.

27       Dated: May 9, 2005  
28       3b142a

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE